In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-188

PETE MARTINEZ-VILLANUEVA, AND
GEORGE THOMAS CALLAHAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were convicted in the Central District of California of sales of narcotics in violation of 21 U.S.C. (1964 ed.) 174 and 26 U.S.C. (1964 ed.) 4705 (a) and were sentenced to imprisonment for five years. The court of appeals affirmed (Pet. App.).

In this Court, petitioners claim that testimony as to statements made by each of them in the course of negotiating the sale was hearsay as to the other and that therefore they were prejudiced by being tried together. It is evident from petitioners' own recitation of the evidence that the statements complained of (see Pet. 6-7) were statements made during and in furtherance

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of the joint venture. The statements of each were thus admissible against the other. *E.g., United States* v. *Rinaldi*, 393 F.2d 97, 99 (C.A. 2), certiorari denied, 393 U.S. 913; *United States* v. *Spencer*, 415 F. 2d 1301, 1304 (C.A. 7).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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